Declassified in Part - Sanitized Copy Approved for Release 2013/05/02 : CIA-RDP90M00005R000100100002-3

OCA Records

OCA FILE LEGS

29 July 1988
OCA 2526-88

MEMORANDUM FOR: Deputy Director for Administration
Deputy Executive Secretary
General Counsel
Director, Office of Security
Deputy General Counsel for Administrative Support
Deputy General Counsel for Litigation and Intelligence Community Affairs
[redacted] OGC
OGC

STAT

FROM: [redacted] Legislation Division
Office of Congressional Affairs

RE: Upcoming Brooks Hearings on NSDD's & Secrecy Agreements

1. We have been informed that the House Government Operations Committee, chaired by Representative Jack Brooks, may hold hearings as described below. Due to the "atmospherics" created by recent news articles concerning intelligence activities vis a vis Panama, however, the hearings are subject to cancellation, postponement or other change on fairly short notice. We will keep you informed of developements.

NSDD Hearings

2. During the week of 25 July 1988, Representative Brooks introduced a bill, H.R. 5092, to require, among other things, the registration and disclosure to the Congress of National Security Decision Directives (NSDD's) and other Presidential documents. We will provide you a copy when available. In the interim, his introductory remarks are attached (Congressional Record, 26 July 1988, pp H5873-74).

3. The Committee's Subcommittee on Legislation and National Security (chaired by Representative Brooks himself) has scheduled a hearing on the bill for 3 August 1988. Witnesses to be called may include: representatives from

Declassified in Part - Sanitized Copy Approved for Release 2013/05/02 : CIA-RDP90M00005R000100100002-3

Declassified in Part - Sanitized Copy Approved for Release 2013/05/02 : CIA-RDP90M00005R000100100002-3

People for the American Way; the General Accounting Office (GAO); Representative Stokes; Representative Hamilton; Representative Dingell; and, Peter Shane, a law professor from Iowa and former head of the American Bar Association's Section on Separation of Powers. The Committee plans to invite Assistant to the President for National Security Affairs Colin Powell but it does not expect he will accept.

Secrecy Agreement Hearings

4. On 10 August 1988, the Committee (or perhaps the Subcommittee) may hold a hearing on the use of secrecy agreements in the Executive Branch. Witnesses to be called will likely include: Steven Garfinckel, head of the Information Security Oversight Office, General Services Administration (ISOO/GSA); constitutional scholars; former government officials; and, public interest groups. We understand that an invitation may be issued to the Agency.

5. The hearing's purpose would be to build support for the appellants' position in AFGE v. Garfinckel, the secrecy agreement case currently on appeal to the Supreme Court, and to attack secrecy agreements and prepublication review generally. Such a hearing would, of course, be just one more in a long series of such hearings by various House committees and subcommittees stretching back to the early 1980's.

5. In informal, preliminary discussions with staff, I indicated the Agency likely would not care to appear and that if it did, the witness would not likely be the Director of Central Intelligence. Noting the pendency of the Supreme Court appeal in the AFGE case, I also suggested the Administration might not appear at all in order to avoid discussing matters under litigation in AFGE.

STAT

Attachment

STAT

OCA/LEG (29 July 1988)

Distribution:
Original - Addressees
1 - D/OCA
1 - DDL/OCA
1 - OCA Registry
1 - PS Signer
1 - OCA Read

Declassified in Part - Sanitized Copy Approved for Release 2013/05/02 : CIA-RDP90M00005R000100100002-3

Declassified in Part - Sanitized Copy Approved for Release 2013/05/02 : CIA-RDP90M00005R000100100002-3

PERMISSION FOR COMMITTEE ON APPROPRIATIONS TO FILE REPORT ON EMERGENCY SUPPLEMENTAL APPROPRIATIONS BILL, FISCAL YEAR 1988

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that the Committee on Appropriations may have until midnight tonight to file a privileged report on a bill making emergency supplemental appropriations for the fiscal year ending September 30, 1988, and for other purposes.

Mr. CONTE reserved all points of order on the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

MAKING IN ORDER ON WEDNESDAY, JULY 27, 1988, OR ANY DAY THEREAFTER, CONSIDERATION OF H.R. 5026, DIRE EMERGENCY SUPPLEMENTAL APPROPRIATIONS, FISCAL YEAR 1988

Mr. WHITTEN. Mr. Speaker, I ask unanimous consent that it may be in order on Wednesday, July 27, 1988, or any day thereafter to consider the bill (H.R. 5026) making dire emergency supplemental appropriations for the fiscal year ending September 30, 1988, and for other purposes in the House, and that all points of order against the bill or against its consideration be waived, and against the committee reported amendment.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. CONTE. Mr. Speaker, reserving the right to object, I just want my side of the aisle to know that I have discussed this with the minority leader, the gentleman from Illinois, Mr. BOB MICHEL, and he has agreed to take up this urgent, dire supplemental appropriation tomorrow.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

Mr. WALKER. Mr. Speaker, reserving the right to object, as I understand it, what we are doing is bringing up the dire emergency bill here.

Mr. CONTE. Mr. Speaker, if the gentleman will yield, that is correct. There are two bills, two supplementals. The gentleman from Mississippi is filing both bills, but tomorrow we will take up the dire emergency bill.

Mr. WALKER. I think I would have some concern about filing the big bill. I would indicate to the gentleman from Massachusetts I would not have a problem with dealing with the skinny bill tomorrow.

The one question though that we had, I have just come out of a meeting where we had a question about what would be the process whereby the bill coming up tomorrow could be amended. Could that be done with a motion to recommit if an amendment appeared to be something our leadership would be interested in doing?

Mr. CONTE. If the gentleman will yield, yes; I think the bill is open for amendments.

Mr. WHITTEN. Mr. Speaker, if the gentleman will yield, may I say to my colleague that would be the natural order or the regular order. But may I say what we have here are those places where the operations will close August 1, so we are advised. So these are the urgent, dire supplementals in this one.

The regular amounts that have been recommended to us by the White House will come up later and be dealt with in the regular way. But this is the place where we tried to get it up, if the gentleman will remember, before the recent convention, and we put it off until today. But many of these programs will close down August 1 unless we act expeditiously and get help from the Senate side. We realize if we put anything much in here we invite perhaps delay which would close a whole lot of activities down.

Mr. WALKER. Further reserving the right to object, I understand what the gentleman is doing. As I say, I agree with the gentleman from Massachusetts. I do not think we have a problem with bringing that up tomorrow in that form.

There are just two things though that concern me. First of all, I am concerned about going ahead and filing the major supplemental at this point. I think we may want to have some more discussions about that.

Second, I am also concerned about the amendment process. Am I assured that we would be able to have amendments to the skinny supplemental tomorrow, is that correct?

Mr. WHITTEN. May I say that the gentleman from Massachusetts [Mr. CONTE] and I discussed this earlier, and we brought up the two bills before the committee today so that folks could see the difference, and we will delay the consideration of the other one so that we could go ahead and take care of this one in time to keep these programs operating.

Mr. CONTE. If the gentleman will yield further, as I understand it, the gentleman brings up a good question. Through a motion to recommit tomorrow we could do anything we want to the bill.

Mr. WALKER. OK, but we would not have amendments, because we would be considering it in the full House, and we would not be able to amend it?

Mr. CONTE. The gentleman is absolutely right.

Mr. WALKER. So the one route for amendment would be a motion to recommit?

Mr. CONTE. The gentleman is correct.

Mr. WALKER. And that is something the gentleman from Massachusetts would assure me at this point would be reserved for our leadership if our leadership desires to do so?

Mr. CONTE. By all means, by all means. That has always been the case.

Mr. WALKER. I do not see a problem with that one. I think there is some hesitancy at this point to go ahead and file the larger supplemental.

Is the motion in a form that it can be divided?

The SPEAKER pro tempore. The first two requests have been granted, I would tell the gentleman from Pennsylvania, for filing.

Mr. WALKER. For filing?

The SPEAKER pro tempore. The gentleman is correct.

Mr. WALKER. And I am reserving the right to object on the question of consideration tomorrow?

The SPEAKER pro tempore. The gentleman is correct.

Mr. WALKER. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Mississippi?

There was no objection.

□ 1700

THE PRESIDENTIAL DIRECTIVES AND RECORDS ACCOUNTABILITY ACT

The SPEAKER pro tempore (Mr. MONTGOMERY). Under a previous order of the House, the gentleman from Texas [Mr. BROOKS] is recognized for 5 minutes.

Mr. BROOKS. Mr. Speaker, today I am introducing legislation which supplements existing law concerning the accountability of Presidential records. My legislation, entitled the "Presidential Directives and Records Accountability Act, would require the registration of Presidential National Security Directives with the Office of Federal Register and their disclosure to the Speaker of the House and the President pro tem of the Senate.

Presently, Executive orders must be registered under the provisions of the Federal Register Act. Because the Federal Register Act does not mention directives, their registration, publication and disclosure to Congress currently can be avoided. Under my legislation, the registration of executive directives with the Office of Federal Register and their disclosure to the Speaker of the House and the President pro tem of the Senate would be mandatory. In addition, my bill addresses another dimension of accounting for Presidential records. As many of us will recall, Congress enacted the Presidential Records Act in 1978 (P.L. 95-591) which specified that all Presidential records created on or after January 20, 1981, are to remain in Federal custody and under the control of the Archivist of the United States when each President leaves office. More recently, the congressional investigation of the Iran-Contra affair has revealed that certain Presidential records were destroyed.

To strengthen accountability, my bill would require that officers and employees of the Executive Office of the President sign a notice of their obligations and requirements concerning the control, management and preservation of

Declassified in Part - Sanitized Copy Approved for Release 2013/05/02 : CIA-RDP90M00005R000100100002-3

Declassified in Part - Sanitized Copy Approved for Release 2013/05/02 : CIA-RDP90M00005R000100100002-3

Presidential records. Furthermore, the bill establishes an office of records management within the Executive Office of the President to secure compliance with statutory requirements governing Presidential records and to otherwise promote good records management practices. Finally, the Archivist is explicitly given final authority within the executive branch to determine what constitutes a Presidential record.

The Committee on Government Operations is very concerned that the President can initiate and direct national policy without the knowledge of Congress through a system of secret directives, like the current National Security Decision Directives [NSDD's].

In 1983, Congress learned of a Presidential directive requiring all present and future executive branch employees with authorized access to classified information to sign a nondisclosure agreement. Indeed, where so-called sensitive compartmented information was involved, these secrecy agreements were to be binding for the life of the signatory and required Government prepublication review of the signatory's writings. The directive also required agency employees to submit to polygraph examinations when leaks were being investigated.

For many individuals, including Members of Congress, this occasion marked their first acquaintance with NSDD's. This directive, NSDD No. 84, sparked considerable outrage. As a consequence, and after the administration refused to halt its implementation, Congress softened its impact through amendments to the Defense Department and State Department authorizations in the fall of 1983 and in the continuing resolution for the current fiscal year.

In 1986, another NSDD—NSDD No. 145—came to Congress' attention when its implementation by the President's National Security Advisor and key Iran-Contra scandal figure, Adm. John Poindexter, was discovered. This directive gave the highly secretive National Security Agency major responsibility for computer security requirements. Further, it gave NSA a degree of regulatory authority over private sector computer security.

Objections arose as to the breadth of NSDD No. 145, its execution by a secretive, quasimilitary agency, and its infringement on the legislative prerogatives of Congress. Subsequently, it was displaced by the Computer Security Act of 1987, Public Law 100-235. During hearings on this act before the subcommittee, a number of details about NSDD's were revealed. Chairman BEILENSON of the Subcommittee on Oversight and Evaluation, House Permanent Subcommittee on Intelligence, testified that copies of NSDD's were not received by that panel. He stated that this "administration and previous administrations have refused to provide such documents on the ground that they were Presidential documents. It's not clear to us at the Intelligence Committee whether these refusals were based on some concept of executive privilege."

What we also learned from these hearings was that the administration's NSDD's were only the latest iteration of a series of Presidential directives issued through the National Security Council since 1947. During the Truman and Eisenhower years, they took the form of position papers which sometimes reached policy conclusions and, if approved by the President with his signature, became operative policy. Over the years, they have assumed various names and have come to take on the character of law, committing the Nation and its resources to policy positions and actions.

NSDD's are particularly disturbing. They fix public policy for our Nation, and at the same time, they rob Congress of its wide-ranging policymaking authority established under the Constitution. Indeed, some NSDD's directly infringe upon the legislative powers of Congress and assume responsibility for matters specifically entrusted to the first branch. Furthermore, they are maintained in security classified status; they are not shared with Congress and, thus, constitute a body of secret law. To date, President Reagan has issued some 286 NSDD's, and the range of subjects covered by them is imaginatively diverse. Some of those identified by the press include authorizing the training of Contras, the invasion of Grenada, and a disinformation campaign against Libya.

Mr. Speaker, I commend this legislation to the attention of my colleagues and the American people. Accountability is a crucial aspect of our form of government. We must be vigilant to preserve and perfect accountability arrangements, and to assure that they operate fairly and effectively.

TRIBUTE TO POLISH PATRIOT AND POETESS, TEOFILA SAMOLINSKA

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois [Mr. ANNUNZIO] is recognized for 5 minutes.

Mr. ANNUNZIO. Mr. Speaker, I rise to call to the attention of my Colleagues in the House of Representatives, that this year marks the 75th anniversary of the death of Teofila Samolinska. This great Polish poetess, novelist, playwright, actress, and patriot, played an instrumental role in working for Polish immigrant causes in the United States, in promoting freedom for the people of Poland, and in developing women's rights in the United States.

Teofila Samolinska was born in the Russian zone of partitioned Poland in 1848. She left Poland with her family after the uprising of 1863 and went into foreign exile, arriving in Chicago at the end of the American Civil War.

In Chicago, Teofila Samolinska became an active member of the Gmina Polska, a patriotic club which was formed in 1866. As a talented writer and poetess, she wrote essays and fictional stories which focused upon the development of patriotic awareness among the Polish immigrant population in Chicago. Her works appeared regularly in several Polish newspapers, including Orzel Polski, Przyjaciel Ludu, Zgoda, and Dziennik Chicagoski. Her first dramatic work, entitled Emancipation of Women, which was dedicated to Gmina Polska, opened as a Polish stage production in Chicago on February 12, 1873.

Because of her numerous creative accomplishments as an author, in 1879, Teofila Samolinska was asked by the Poles in the United States to write an address in poetry to honor Joseph Ignace Kraszewski to commemorate the golden jubilee of his writings as a novelist. In 1880, she won the first prize in a contest held in Warsaw, Poland for her comedy, Trzy Flory, the Three Florians.

Throughout her life in America, Teofila Samolinska maintained a strong commitment to the creation of a patriotic organization to unify the growing Polish immigrant population around the United States. She wrote several letters to patriots in Poland requesting their help in urging the various existing Polish societies in the United States to form one unified group. The purpose of this group would be not only to work for immigrant causes in the United States, but also to instill patriotism in Polish immigrants and to work for the freedom of Poland. For her tireless efforts to achieve this objective, she is considered by many to be one of the spiritual founders of the Polish National Alliance, a fraternal organization founded in 1880 in Chicago. Today, the Polish National Alliance has an active membership of over 300,000 under the able leadership of my good friend and dedicated civic leader, Aloysius Mazewski, who has been president since 1967.

Decades ahead of her time, Teofila Samolinska believed that this patriotic movement should allow women to join, with rights equal to those men had. Although she was initially unsuccessful, in 1887, she founded the Polish Women's Central Society in Chicago, which formed the nucleus of what was later to become the women's division of the Polish National Alliance.

This year, under the direction of Dr. Edward C. Rozanski, archivist of the Illinois Division of the Polish American Congress, and chairman of the Samolinska Observance Committee, several events will be held to commemorate the 75th anniversary of the death of the Polish-American writer and patriot, who died on December 1, 1913. The Teofila Samolinska Observance Committee was begun by Post No. 2 of the Polish Falcons of America with John Stanclik, President.

Later this year, a concelebrated Polish Mass will be held in honor of Teofila Samolinska, and there will be a dedication of a monument to her at St. Adalbert's Cemetery in Niles, IL. In addition, there will be an artistic program to honor her as an actress and poetess.

Mr. Speaker, I would like to take this opportunity to commend the Samolinska Observance Committee for initiating these activities to commemorate the 75th anniversary of the death of Teofila Samolinska. Her life's work remains as a source of strength and inspiration to Polish-Americans, and all freedom-loving people throughout the world, who cherish their precious heritage of liberty.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana [Mr. VISCLOSKY] is recognized for 5 minutes.

[Mr. VISCLOSKY addressed the House. His remarks will appear hereafter in the Extension of Remarks.]

THE UNITED STATES RESPONSE TO JAPAN'S INFLUENCE

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Maryland [Mrs. BENTLEY] is recognized for 60 minutes.

Mrs. BENTLEY. Mr. Speaker, in recent weeks I have been reading excerpts from a book "The Ja

Declassified in Part - Sanitized Copy Approved for Release 2013/05/02 : CIA-RDP90M00005R000100100002-3